

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DONALD DAMROW,)	
)	
Plaintiff,)	4:05CV3041
)	
v.)	
)	
FIRST NATIONAL BANK OF)	MEMORANDUM AND ORDER
HOLDREGE, KENNETH SLOMINSKY,)	
ERIC TITUS, RONALD STERR, TIM)	
WIEBE, JEANETTE HARDEN, KIRK)	
RILEY, MARK UTTER, and)	
DOUGLAS SCOTT LATTE,)	
)	
Defendants.)	
)	

The plaintiff has demanded North Platte as the place of trial for this case. Filing 9. The defendants oppose that demand and request Lincoln as the place of trial. For the reasons discussed herein, I conclude this case should be tried in Lincoln, Nebraska.

Numerous affidavits were filed as evidence for consideration on the place of trial issue. Some were signed and notarized; others were not. Under the administrative procedures of this court, the signature on electronically filed affidavits of counsel registered on this court's Electronic Case Filing (ECF) system need not be notarized. An "s/" signature is sufficient. However, an "s/" signature cannot replace an actual notarized signature for electronically filed non-attorney affidavits. Administrative Procedures (Civil Cases) II(C).

Accordingly, I shall grant the defendants' filing 25 motion to strike the affidavit of Ronald Sterr attached as Exhibit D to their filing 24 index of evidence, but I shall deny the defendants' request to substitute the stricken Sterr affidavit

with the Sterr affidavit document attached as exhibit A to the filing 25 motion to strike and substitute. Sterr is a non-attorney party defendant, and neither filing 24, exhibit D nor the filing 25, exhibit A includes Sterr's notarized signature.

In determining the place of trial for this case, I have considered the notarized affidavits and affidavits of registered counsel signed with an "s/." All other affidavits were disregarded, as were conclusory statements such as "North Platte Nebraska is a more convenient location than Lincoln, Nebraska for litigants, witnesses and Plaintiff's counsel." Filing 15, p. 2 ¶ 8.

The plaintiff is a resident of Phelps County, Nebraska. His attorneys maintain offices in Gothenburg, Nebraska which is 35 miles from North Platte and 200 miles from Lincoln. Filing 15, p. 1 ¶¶ 4 & 6; filing 27, exs. A & B (Affidavits of Potter and Vinton).

The principal place of business for the defendant First National Bank-Holdrege is located in Holdrege, Phelps County, Nebraska, several of the individual defendants reside in Holdrege, and the majority of the plaintiff's witnesses are located in Phelps County, Nebraska. The court takes judicial notice of the fact Holdrege, Phelps County, Nebraska, is approximately 90 miles from North Platte and 170 miles from Lincoln. Filing 15, pp. 1-2 ¶¶ 4, 5 & 7.

Defendant Hardin resides in Hastings, Nebraska, which is 107 miles from Lincoln and 152 miles from North Platte. Filing 24, ex. B (Affidavit of Jeanette Harden DeWalt). Defendant Utter lives in Sioux City, Iowa, which is 153 miles from Lincoln and

370 miles from North Platte. Filing 24, ex. C (Affidavit of Utter). Counsel for defendants Sterr and Wiebe reside in Topeka, Kansas. In terms of travel time, for these attorneys, Lincoln is three hours closer. Filing 24, ex. A (Affidavit of Schultz). Counsel for the defendant bank is located in Omaha, Nebraska. The court takes judicial notice of the fact that Omaha is 60 miles from Lincoln and 280 miles from North Platte.

Although none of the parties, witnesses, or counsel resides in Lincoln, the trial judge assigned to this case does and, when the interests of all witnesses, parties, and counsel are considered, Lincoln is a more central location for this case than North Platte.

IT THEREFORE HEREBY IS ORDERED:

1. Defendants' Motion to Strike and Allow Substitution of a Corrected Exhibit "D" to Defendants' Index of Evidence, filing 25, is granted in part and denied in part as follows:
 - A. Exhibit D to filing 24, entitled "Affidavit of Ron Sterr in opposition to Plaintiffs' Demand for Trial in North Platte, Nebraska," is stricken.
 - B. The request to substitute filing 25, exhibit A for filing 24, exhibit D is denied.
2. Plaintiff's demand for North Platte as the place of trial, filing 9, is denied. The place of trial for this case is Lincoln, Nebraska.

DATED this 18th day of May, 2005.

BY THE COURT:

s/ *David L. Piester*

David L. Piester
United States Magistrate Judge